IN THE HIGH COURT OF JUDCIATE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.646 OF 2003
IN
NOTICE OF MOTION NO.1658 OF 2002
IN
S.C. SUIT NO.2170 OF 2002

Abida Sharif Salema)
aged 38 years, 270/2148 Motilal Nagar)
No.1, Goregaon (West))
Mumbai 400 104.).. Appellant

Versus

1) Maruti Ishwar Lodhe)
aged 46 years, at present residing)
at D-6, 71, Asmita Jyoti Co-op. Hsg.)
Society Ltd., Marve Road, Malad)
(West), Mumbai 400 095.)

2) Maharashtra Housing and Area)
Development Authority, having their)
office at Griha Nirman Bhavan)
Bandra (East), Mumbai 400 051.)

3) Sandesh Madhukar Londhe)
aged 30 years, C/o.Shri Bapu)
Limbaji Akhade, Behind Maruti)
2nd Temple, B.M.K. Compound)
Kranti Nagar, Kurla (West))
Mumbai 400 070.).. Respondents

Mr.A.C.Singh i/b.Mr.D.R.Shah for the Appellant.

Mr.S.K.Chaurasia i/b.Vipin Mishra for Respondent No.1.

Mrs.G.P.Mulekar, Assistant Government Pleader, for Respondent No.2.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 22ND NOVEMBER 2004

ORAL JUDGMENT :

. This Appeal From Order has been filed against an

order under which the Court Receiver, High Court, Bombay, has been appointed in respect of the suit premises bearing tenement No.270/218 at Motilal Nagar No.1, Link Road, Goregaon (West), Mumbai 400 104. The Suit has been filed by Respondent No.1 claiming possession over the tenement which was allotted to him by Maharashtra Housing and Area Development Authority (hereinafter referred to as "MHADA") i.e. Respondent No.2 herein. According to Respondent No.1, the premises were sold to the Appellant by Respondent No.3 without any authority. After the suit premises were sold to the Appellant Respondent No.1 filed a Suit before the City Civil Court for a declaration that the Appellant was a trespasser and for possession of the suit premises. A Notice of Motion was also moved before the trial Court. By way of the Notice of Motion, Respondent No.1 had sought appointment of the Court Receiver in respect of the suit premises. The trial Court has decided the Motion and has appointed the Court Receiver, High Court, Bombay. Defendant No.2 i.e. Respondent No.2 herein was restrained from transferring the suit premises to the name of the Appellant or any other person. While admitting this Appeal From Order, this Court has stayed the order of the trial Court by order dated 29th April 2004.

2. Mr.Singh, learned Advocate for the Appellant,

submits that the trial Court while deciding the Motion has not framed the issue regarding maintainability of the Suit as a preliminary issue although the same has been raised by the Appellant as well as Respondent No.2 MHADA in their respective replies. According to him, the property is valued at over Rs.50,000/- and, therefore, the Suit would lie in this Court and not in the City Civil Court, Bombay.

3. A bare perusal of the order of the trial Court indicates that the trial Court has not framed the issue with respect to the jurisdiction of the Court to try the Suit as a preliminary issue. It is incumbent upon the trial Court to frame such an issue as a preliminary issue under Section 9A of the Civil Procedure Code. Before granting any relief on the Motion, the trial Court ought to have decided the preliminary issue relating to jurisdiction.

4. I am of the considered opinion that the trial Court has erred in deciding the Motion without deciding the preliminary issue regarding the jurisdiction of the Court to try the Suit. Hence, the order of the trial Court is set aside. The trial Court shall frame this issue and decide the same as expeditiously as possible. In the meanwhile, the possession of the tenement which today continues to be with the Appellant, will remain

with the Appellant. However, the Appellant will furnish an undertaking to this Court within one week from today stating that she will not create any third party rights in respect of the suit premises. However, MHADA will not transfer the premises to the Appellant till the the Suit is disposed of.

5. Appeal allowed. No order as to costs.